



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

PIEDMONT REGIONAL OFFICE

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STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO

Lehigh Cement Company LLC

Registration Number 52541

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Lehigh Cement Company LLC for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable Permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Facility" means Lehigh's Chester facility, a bulk cement storage and transfer plant, located at 13021 Ramblewood Drive, Chester, Virginia.
5. "Lehigh" means Lehigh Cement Company LLC, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. Lehigh is a "person" within the meaning of Va. Code § 10.1-1300.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a Consent Order or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "PCE" means a partial compliance evaluation by DEQ staff.
9. "Permit" means a Minor New Source Review permit issued under the Virginia Air Pollution Control Law and the Regulations to Lehigh for the Facility, Registration Number 52541, on July 17, 2015.
10. "PRO" means the Piedmont Regional Office of DEQ, located in Glen Allen, Virginia.
11. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. Lehigh Cement Company LLC owns and operates the Facility in Chester, Chesterfield County, Virginia. The Facility is a bulk cement storage and transfer plant.
2. On June 1, 2015, DEQ staff received a permit application to construct and operate a cement storage and transfer plant from Lehigh. This application was deemed complete on July 7, 2015. Based on the conditions requested in the permit application, the Facility is subject to New Source Review regulations and is considered a synthetic minor source for particulate matter (PM) emissions.
3. On June 30, 2015, DEQ staff performed a site evaluation of the Facility and included the following observation in a PCE:

Three storage silos, the building in which the rail cars unload and the building containing the electrical, compressor and control room had been constructed. Additionally, concrete had been poured in the vehicle access areas inside the fenced in area on the southwest side of the property and workers were pouring the concrete for the vehicle access areas inside the fenced in area on the northwest side of the property.

4. 9VAC5-80-1120 of the Regulations states in paragraph A, "No owner or other person shall begin actual construction of, or operate, any new stationary source or any project subject to this article without first obtaining from the board a permit under the provisions of this article. The owner may not construct or operate the stationary source or project contrary to the terms and conditions of that permit."
5. 9VAC5-80-1210 of the Regulations states in paragraph E, "Any owner who constructs or operates a source subject to this section not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a source subject to this section who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
6. On July 17, 2015, DEQ staff issued the Permit to Lehigh to construct and operate a cement storage and transfer plant at the Facility.
7. On July 27, 2015, the Department issued Notice of Violation No. APRO000220-001, for the violations as described above.
8. On August 13, 2015, DEQ staff met with representatives from Lehigh to discuss the violations noted in the NOV and potential resolutions to this matter.
9. Based on the information submitted in the June 1, 2015, permit application and the results of the June 30, 2015 PCE, the Board concludes that Lehigh violated 9VAC5-80-1120(A) and 9VAC5-80-1210(E), as described in Section C, above.
10. By applying for and receiving a Permit to construct and operate a cement storage and transfer plant at the Facility, Lehigh has performed the corrective actions that demonstrate the violations described in Section C above, have been addressed.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §10.1-1309 and -1316, the Board orders Lehigh, and Lehigh agrees to:

1. Pay a civil charge of **\$18,065** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Lehigh shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Lehigh, for good cause shown by Lehigh, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.* after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Lehigh admits the jurisdictional allegations, the findings of fact, and conclusions of law in this Order.
4. Lehigh consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Lehigh declares it has received fair and due process under the Administrative Process Act and Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend or enforce this Order.
6. Failure by Lehigh to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Lehigh shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Lehigh shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Lehigh shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Lehigh. Nevertheless, Lehigh agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Lehigh has completed all of the requirements of the Order; or
 - b. Lehigh petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Lehigh.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Lehigh from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Lehigh and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Lehigh certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Lehigh to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Lehigh.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Lehigh voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 13TH day of NOVEMBER, 2015.



Michael P. Murphy, Regional Director
Department of Environmental Quality

(for)

Lehigh Cement Company LLC, voluntarily agrees to the issuance of this Order.

Date: 11/6/15 By: *Dennis M. Dolan*, President
(name) (Title)
Lehigh Cement Company LLC

State of Pennsylvania
City/County of Lehigh

The foregoing document was signed and acknowledged before me this 6th day of
November, 2015, by Dennis M. Dolan, who is
(name)
President of Lehigh Cement Company LLC on behalf of the
company.

Angela S. Shafer
Notary Public
1149429
Registration No.

My commission expires: 11/6/2016

Notary seal:

